

IN THE MATTER OF THE TENURE :  
HEARING OF DONALD HAMMARY, :  
SCHOOL DISTRICT OF THE CITY OF : COMMISSIONER OF EDUCATION  
ASBURY PARK, MONMOUTH COUNTY. : DECISION  
\_\_\_\_\_ :

SYNOPSIS

Board filed tenure charges of unbecoming conduct and other just cause against respondent special education teacher/guidance counselor.

At the OAL, the parties agreed to a settlement.

The Commissioner rejected the settlement, as it did not comport with the *Cardonick* standards for settling tenure matters in that it failed to set forth the nature of the charges and the circumstances justifying settlement, was not approved by the Board, and failed to reflect respondent's understanding that the matter will be referred to the Board of Examiners for possible revocation of his certificates. The matter was remanded to OAL for further proceedings.

February 25, 2002

This synopsis is not part of the Commissioner's decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.

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The record of this matter, Initial Decision of the Office of Administrative Law (OAL) and Stipulation of Settlement have been reviewed. Initially, the Commissioner notes that, pursuant to *N.J.A.C. 6A:3-5.6(a)*, once tenure charges are certified to him, such charges may be settled only with his approval; any proposed settlement, whether submitted to the Commissioner or to the Administrative Law Judge, must address the standards established by the State Board of Education in the matter entitled *In re Cardonick*, 1990 *S.L.D.* 842, 846. Specifically, the proposed settlement must: 1) Be accompanied by documentation as to the nature of the charges; 2) Include an explanation of the circumstances justifying the settlement or withdrawal; 3) Evidence the consent of both the charged and the charging parties; 4) Indicate that the charged party entered into the agreement with a full understanding of his or her rights; 5) Demonstrate that the agreement is in the public interest; and 6) Where the charged party is a teaching staff member, indicate that he or she has been advised of the Commissioner's duty to refer tenure determinations resulting in loss of position to the State Board of Examiners for possible loss of certificate. *N.J.A.C. 6A:3-5.6*. Because the proposed agreement does not comport with these standards, the Commissioner is compelled to reject it and remand this matter, as specified below.

At the outset, the Commissioner finds that the parties fail to set forth the nature of the charges and the circumstances justifying the proposed settlement. It is well-established that, having once taken up the burden of tenure charges, the District may not lay it down without spreading forth on the record a reasonably specific explanation of why such charges can no longer be pursued or why it is now in the public interest not to pursue them. *See In the Matter of the Tenure Hearing of Kenneth S. Smith, School District of the City of Orange, Essex County*, decided by the Commissioner March 22, 1982, decision on remand June 16, 1983, 1983 *S.L.D.* 420; *affirmed with modification* by the State Board of Education November 2, 1983, 1983 *S.L.D.* 489; *affirmed* N.J. Superior Court, Appellate Division, January 30, 1986. The Commissioner notes that his determination in this regard was highly influenced by the serious nature of the charges against respondent, *i.e.*, allegations of gross misconduct involving students.

Additionally, the Commissioner recognizes that there is no provision in law for the voluntary surrender of a teaching staff member's certificates. Rather, in accordance with *Cardonick, supra*, a settlement agreement which results in the loss of a position must reflect the respondent's understanding that he was advised of the Commissioner's duty, pursuant to *N.J.A.C.* 6:11-3.6, to refer such tenure determinations to the State Board of Examiners for possible revocation of certificate.<sup>1</sup>

While the Commissioner does not preclude the possibility of settlement in this matter, he stresses that in order for him to meet his own obligation to the schools and children of this state, he must be assured that any settlement is consistent with appropriate standards for setting aside tenure matters as expressed in *Cardonick, supra*.

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<sup>1</sup> A revised agreement may, nonetheless, also include a statement that respondent will not oppose such revocation proceedings before the State Board of Examiners.

Accordingly, the proposed settlement is rejected for the reasons expressed herein. The Commissioner hereby remands this matter to the OAL for expansion of the record and revision of the documents, consistent with the concerns set forth above. If the parties are unwilling or unable to reach accord on a modified agreement for submission to the Commissioner, the matter shall proceed to hearing.

IT IS SO ORDERED.<sup>2</sup>

COMMISSIONER OF EDUCATION

Date of Decision: 2/25/02

Date of Mailing: 2/28/02

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<sup>2</sup> This decision, as the Commissioner's final determination, may be appealed to the State Board of Education pursuant to *N.J.S.A.* 18A:6-27 *et seq.* and *N.J.A.C.* 6A:4-1.1 *et seq.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.